IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 693 OF 2005

Somnath Khanderao Nimse .. Appellant

Vs.

Smt. Laxmibai Manik Dive and ors. .. Respondents

WITH

APPEAL FROM ORDER NO. 694 OF 2005

Vasantrao Khanderao Nimse .. Appellant

Vs.

Smt. Laxmibai Manik Dive and ors. .. Respondents

WITH

APPEAL FROM ORDER NO. 695 OF 2005

Bhausaheb Khanderao Nimse .. Appellant

Vs.

Smt. Laxmibai Manik Dive and ors. .. Respondents

WITH

APPEAL FROM ORDER NO. 696 OF 2005

Shantaram Khanderao Nimse .. Appellant

Vs.

Smt. Laxmibai Manik Dive and ors. .. Respondents

WITH

APPEAL FROM ORDER NO. 697 OF 2005

Madhukar Damu Salunke .. Appellant

Vs.

Smt. Laxmibai Manik Dive and ors. .. Respondents

Mr. G.S. Godbole with Mr. G.D. Utangale i/by M/s. Utangale & Co. for appellants.
Mr. K.S. Dewal for Respondent Nos.1 to 3.
Mr. A.A. Kumbhakoni with Mr. T.D. Deshmukh for Respondent No.5

CORAM: B.H. MARLAPALLE, J.

Date : July 15, 2005.

P.C.:

1. Heard Mr. Godbole with Mr.Utangale i/by M/s. Utangale & Co. the learned counsel for the appellants and Mr. Dewal the learned counsel for respondent nos.1 to 3 and Mr. Kumbhakoni with Mr. Deshmukh the learned counsel for respondent no.5.

2. These appeals arise from the common order passed below the applications at Exh.5 filed in Special Civil Suit Nos.7,8,9,10 and 11 of 2004 by the learned Civil Judge, Senior Division, Nashik on 25/4/2005. The said applications have been rejected.

3. The suit land in all the five suits is owned by defendant nos.1 to 3, who have executed a development agreement on 3/11/1989 in favour of defendant no.4. As per the plaintiffs the defendant no.4, in turn, executed a development agreement on 9/1/1991 in favour of each of the plaintiffs for the development of the respective suit properties. However, the defendant nos.1 to 3 entered into a development agreement with the defendant no.5 on 7/3/1995, behind the back of the plaintiffs. The said agreement came to be challenged in the individual suits and the plaintiffs sought permanent injunction against the defendants.

4. Admittedly, the defendant no.4 had filed Regular Civil Suit No.49 of 1997 against the defendant nos.1 to 3 and 5 and the said suit was decreed by way of compromise on 31/12/1998. As per the compromise decree defendant no.4 relinquished his claim of a developer pursuant to the agreement dated 3/11/1989 over the suit properties and the development rights were thus created by defendant nos.1 to 3 in favour of defendant no.5 by the said decree. As per the

plaintiffs the consent decree was brought to their knowledge for the first time after they had initiated the instant suit. On the face of this factual position it is not necessary to examine the challenge to the impugned common order in as much as the development rights have been vested in favour of the defendant no.5 by defendant nos.1 to 3 by way of a compromise decree and there is no challenge to the said decree in the instant suit. The plaintiffs may have an independent remedy to file fresh suits challenging the said decree on the ground of exparte or / and fraud having been played on the court. But, unless such a challenge is raised in the appropriate proceedings, there is no question of applications for interim injunction being entertained at the instance of the plaintiffs. Impugned order, therefore, cannot be faulted with.

5. Regarding the possession of the suit properties, both the parties claimed their possession, however, the defendant no.5 does not appear to have filed any execution proceedings for the execution of the consent decree passed in Regular Civil Suit No.49

of 1997 as yet and, therefore, the plaintiffs have remedy to challenge the said decree by filing separate suits, as noted hereinabove.

6. The appeals are, therefore, dismissed with liberty to the plaintiffs to take resort to appropriate alternative legal remedies as may be permissible in law. Status quo in respect of possession over the suit properties shall continue to operate for a period of four weeks, provided fresh legal proceedings are initiated within a period of two weeks from today and Regular Civil Suit Nos.7 to 11 of 2004 are withdrawn within the said period. It is further made clear that any application for temporary injunction to be filed in the fresh suits or any other proceedings shall be considered on its own merits and without being influenced by the order of status quo.

(B.H. Marlapalle,J.)